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FILED

APR 28 2008

E-filing

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

CV

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CRB

(PR)

RE: PETITION FOR WRIT OF HABEAS CORPUS IN
THE FEDERAL COURT AND THE SUPREME COURT OF CALIFORNIA
LAST RULINGS ON PETITIONS FOR WRIT OF HABEAS CORPUS
FILED IN STATE COURT.

1235

DEAR JUSTICE(S) FOR THE U.S. DISTRICT COURT:

I AM NOW ATTEMPTING TO SEEK RELIEF IN THE FEDERAL
COURTS FOR THE GROUNDS STATED WITHIN THE PETITION FOR
WRIT OF HABEAS CORPUS SENT TO THIS COURT. THIS PETITION
CAME FROM THE LAST DENIAL FROM THE SUPREME COURT
OF CALIFORNIA. THE GROUNDS WERE NOT GIVEN IN RULING
ON THE MERITS. THE LAST DENIAL WAS GIVEN WITH THE
CITING OF CALIFORNIA STATE CASES IN RE SWAIN (1949)
34 Cal. 2d 300, 304; PEOPLE V. DUNN (1995) 9 Cal. 4th
464, 474. YET, HERE IS A CONCERN, I RAISED THE SAME
ISSUES IN THIS COURT AS I DID IN THE STATE COURT, BUT
I AM TRYING TO ADVANCE PROCEDURAL DEFAULT THAT CAN
NOT BE FAIRLY ATTRIBUTED TO ME. UNDER THE IN RE SWAIN
SUPRA, THE STATE COURT CAN DISMISS CLAIMS THAT ARE
NOT SUFFICIENTLY SPECIFIC, AND THE FEDERAL COURT AGREES

THAT THE CLAIM(S) BROUGHT IN THE STATE COURT WERE NOT
 ALLEGED WITH SPECIFICITY, THEN THE PETITIONER SHOULD
 FILE A NEW, MORE DETAILED, HABEAS CORPUS PETITION IN THE
 STATE COURT IN ORDER TO GET A DECISION ON THE MERITS.
 I FIND TWO THINGS THAT ARE UNCLEAR, FIRST THE FEDERAL
 COURT HAS NOT AGREED THAT THE CLAIMS BROUGHT IN THE
 STATE COURT WERE NOT SUFFICIENTLY SPECIFIC, SECOND, PETITIONER
 HAS BROUGHT ISSUES OF INEFFECTIVE ASSISTANCE ISSUES BEFORE
 THE COURT WHICH ONLY REVIEWED DENIAL ORDERS JUST PLAINLY
 STATING PETITION FOR WRIT OF HABEAS CORPUS DENIED WITH
 NO CITATION OF ANY CASE REFERRING TO ISSUES BEING
 UNSPECIFIC (SUPREME COURT OF CALIFORNIA NO. S152658, S160704).

IN THE RECORDS OF THE STATE COURTS I HAVE GIVEN THAT
 COURT THE SAME ISSUES I AM PRESENTING BEFORE THIS
 FEDERAL COURT. THE ISSUES RAISED IN THE PETITION
 BEFORE THIS COURT WERE RAISED IN PETITION NO. 9160704
 WHICH WAS FILED FEBRUARY 7, 2008. HOWEVER THAT PETITION
 WAS ORDERED FILED AS A SUPPLEMENT TO PETITION NO. 9158052
 WHICH WAS FILED NOVEMBER 8, 2007 AND DENIED MARCH 26, 2008.
 I ASSERT THAT I HAVE EXHAUSTED OR COMPLIED TO THE
 EXHAUSTION REQUIREMENTS THAT ALLOW ME ACCESS TO SEEK
 RELIEF IN THIS COURT. BECAUSE THE STATE SUPREME COURT
 WAS PRESENTED ISSUES OF FEDERAL DUE PROCESS AND EFFECTIVE
 ASSISTANCE OF COUNSEL VIOLATIONS, AND THE STATE COURT HAS
 DISMISSED CLAIMS FOR LACK OF PARTICULARITY AMOUNTS TO
 HOLDING CLAIMS THEMSELVES DEFECTIVE. (SEE CROTT'S V. SMITH (9th CIR.
 1996) 73 F.3d 861, 865; KIM V. VILLALOBOS (9th CIR. 1986) 799 F.2d
 1317, 1319-20) AND THEREFORE I HAVE EXHAUSTED THE EXHAUSTION
 REQUIREMENT TO OBTAIN FEDERAL HABEAS REVIEW.


IN THE PETITION BEFORE THIS COURT, PETITIONER HAS RAISED EVERY ISSUE THAT CONTAINS FRAMED FEDERAL CONSTITUTIONAL VIOLATIONS AND SUBMITTED THEM BEFORE THE STATE SUPREME COURT WHERE NO ADEQUATE AND INDEPENDENT STATE GROUND IS NOT ADEQUATELY ADDRESSED IN THE STATE COURTS OPINION (SEE COLEMAN V. THOMPSON (1991) 501 U.S. 722, 733-35; SIRIPONG V. CALDERON (9th Cir. 1994) 35 F.3d 1308, 1316-19; HUNTER V. AISPURO (9th Cir. 1992) 982 F.2d 344, 346-47).

HOWEVER IF IT IS CONSIDERED THAT THE STATE'S SUPREME COURT DECISION IS FOUND TO BE INDEPENDENT AND ADEQUATE STATE GROUND(S), PETITIONER SEEKS TO DEMONSTRATE A CAUSE TO ALLOW FEDERAL HABEAS REVIEW. FIRST, ISSUES THAT ARE SUBMITTED IN THE STATE COURT, PETITIONER SUBMITTED THEM BECAUSE THE COUNSEL OF RECORD FOR HIS DIRECT APPEAL WAS NOT GOING TO RAISE THEM. SECOND, PETITIONER'S RIGHT TO ISSUES RAISED IN THE DIRECT APPEAL IS MOORED TO COUNSEL DECISIONS TO MAKE THEM OR NOT. NOT WITHSTANDING JUST COUNSEL OF RECORD REFUSAL TO LITIGATE THE FEDERAL CONSTITUTIONAL VIOLATIONS BEFORE THE STATE COURTS, PETITIONER HAS IN CASE NO: S152658, S158052, S160704 AND NOW IS TRYING TO IN THIS COURT BECAUSE FAILURE TO REVIEW THE CLAIMS WOULD RESULT IN A FUNDAMENTAL MISCARriage OF JUSTICE TO PETITIONER (COLEMAN V. THOMPSON (1991) 501 U.S. 722, 750).

AS STATED IN THE JUDGEMENT OF THE FEDERAL COURT IN NO. C 07-3663 [RB (PR)] ORDER OF DISMISSAL. THE COURT WAS AWARE OF THE FILING OF SEVERAL PETITIONS FOR WRIT OF HABEAS CORPUS AND/OR PROHIBITION IN THE STATE COURT (SEE CASE NUMBERS OF CALIFORNIA APPELLATE COURTS NO. A117294;

S152355; ~~REDACTED~~, ~~REDACTED~~, ~~REDACTED~~). THIS DISMISSAL ORDER WAS ISSUED JULY 23, 2007 BY CHARLES R. BREYER, UNITED STATES DISTRICT JUDGE WHO DISMISSED WITHOUT PREJUDICE TO REFILING A NEW PETITION FOR WRIT OF HABEAS CORPUS AFTER ALL PENDING STATE POST-CONVICTION PROCEEDINGS ARE COMPLETED. PETITIONER SINCE MARCH 26, 2008 HAS DONE SO AND RESPECTFULLY SEEKS FEDERAL HABEAS REVIEW BY THIS COURT.

RESPECTFULLY


EUGENE WARREN RUTLEDGE
PETITIONER

ENCLOSURES: LETTERS FROM THE COURT CLERK DATED NOVEMBER 15, 2007; JANUARY 25, 2008; FEBRUARY 8, 2008; FEBRUARY 20, 2008; SUPREME COURT OF CALIFORNIA DOCKET LISTING FOR NO. S 160704; SUPREME COURT OF CALIFORNIA PETITION DENIAL FOR NO. S158052; UNITED STATES DISTRICT COURT ORDER OF DISMISSAL OF JULY 23, 2007 BY U.S. DISTRICT JUDGE CHARLES R. BREYER.

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